IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

MFA.No. 502 of 1999()

(AGAINST AWARD PASSED BY THE MOTOR ACCIDENTS CLAIMS TRIBUNAL THODUPUZHA IN OP(MV) NO.533/1995 DATED 4/12/1997)
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APPELLANT: 2ND RESPONDENT:

MATHEW JOSEPH,
MULLAKERIYIL HOUSE,
ELAMDESOM, THODUPUZHA.

BY ADV. SRI.RAJU JOSEPH

RESPONDENTS: PETITIONERS AND 1ST AND 3RD RESPONDENTS:
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1. **JANAKI, W/O.LATE SUKUMARAN,**
   RESIDING AT PAREPARAMBIL HOUSE,
   PAINAVOORKUDY KARA, KUTTAMPUZHA VILLAGE.

2. **NIRMALA, D/O. LATE SUKUMARAN,**
   RESIDING AT PAREPARAMBIL HOUSE,
   PAINAVOORKUDY KARA, KUTTAMPUZHA VILLAGE.

3. **MANOJ, S/O.LATE SUKUMARAN,**
   RESIDING AT PAREPARAMBIL HOUSE,
   PAINAVOORKUDY KARA, KUTTAMPUZHA VILLAGE.

4. **BENNY MATHEW, MARAYIL HOUSE,**
   ANAVIRATTY, ERATTAKANAM.

5. **THE ORIENTAL INSURANCE COMPANY,**
   EDAPPALLY, COCHIN.

BY ADV. SRI.MATHEWS JACOB for R5

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.2902/1999 IN M.F.A.NO.502/1999

DISMISSED

2/08/2007 **SD/- J.B.KOSHY, JUDGE**

SD/- V.GIRI, JUDGE

/TRUE COPY/

P.A.TO JUDGE

KSS

J.B.KOSHY & V.GIRI,JJ.

MFA NO.502 of 1999

Dated this the 2nd day of August, 2007

JUDGMENT

Koshy, J.

The claimants are the widow and children of deceased Sukumaran. While he was travelling in a jeep, he sustained severe injuries in an accident and he died on 9.1.1995 at the Medical College Hospital, Ernakulam. It was found that the accident occurred due to the negligence of the driver of the vehicle insured by the 5th respondent Insurance Company. The Tribunal awarded an amount of Rs.76,000/= with 12% interest and directed the Insurance Company to deposit the same and recover it from the owner of the vehicle, the appellant herein, as there was violation of policy conditions. Ext.B1 is the policy issued by the 5th respondent Oriental Insurance Company. The vehicle was registered as a private car. But it was proved that the deceased was travelling in the vehicle with arrack. According to the Tribunal, since the vehicle was used for carrying goods, there is violation of policy condition. It is contended that as it is a private car, he can travel in that car but there is no prohibition in carrying some goods with him in the private vehicle. But the fact that the deceased was carrying arrack for the licenced shops will not make it as a goods vehicle and it was also pointed out that there is comprehensive policy and the owner is indemnified by

insurance. It was contended that the Tribunal's view that there is violation of the policy condition is wrong. There is no condition in the policy to show that the passengers should not carry the personal luggage in the vehicle. When the matter came up for hearing, a contention was raised that even if he is a passenger in the private car, he is not liable to be covered by the insurance policy based on the decision of the Apex Court in ***United India Insurance Co.Ltd.*** v ***Tilak Singh*** (2006(2) KLT 884). In view of the above decision, the matter was referred to a full bench of this court. A Full Bench in the decision reported in ***Mathew Joseph*** v ***Janaki*** (2007(1) KLT 747 (F.B.) held that gratuitous passengers in a transport vehicle can have coverage only when a comprehensive policy or extended policy has been availed of by the owner of the vehicle. In ***Amrit Lal Sood v Kaushalya Devi Thapar***(AIR 1998 SC 1433) also took a view that if the conditions of the policy covers the occupant of the car, then the passengers are also entitled to be covered. A perusal of Ext.B1 policy certificate would show that no specific premium was paid for covering passengers, but it is a comprehensive policy. It was contended that in comprehensive policy, passengers are covered. The full policy was not produced. Whether deceased, who was travelling in a private car can be considered as covered, can be decided only after seeing the full terms of the policy. That is not produced. According to the appellant, in view of the time lag and subsequent transfer of the vehicle, comprehensive policy is not with him. But Insurance Company must have the policy(office copy). Therefore the matter is remanded for consideration by the Tribunal. The claimants need not appear. The dispute is regarding the Insurance Company and the owner

only. The Insurance Company shall produce the full policy and the matter shall be decided by the Tribunal. While being examined, the first respondent who is the widow of the deceased who was not seen the accident stated that while calling for passengers to travel in the vehicle, the deceased was also entered into the vehicle, but in the cross examination, she stated that the driver of the vehicle was a friend of the deceased and hence he was invited to travel with him. Merely because of widow's statement in the Chief Examination, it cannot be held that the vehicle was used for hire or reward. The burden is on the Insurance Company to prove that there is violation of the policy conditions. In this connection we also refer to the decision of the Supreme Court in ***National Insurance Co.Ltd. v. Swaran Singh*** (AIR 2004 SC 1531). Both parties can adduce evidence regarding the use of the vehicle at the time of the accident and scope of coverage of insurance and right of indemnity.

The appellant and Insurance Company to take notice of the case that is posted on 22.10.2007 before the Tribunal.

Appeal is partly allowed.

J.B.KOSHY, JUDGE

V.GIRI,JUDGE

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